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High court urged to upset rulings on CIA suits here

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WASHINGTON — Lawyers for former CIA Director William Colby and his deputy, Vernon Walters, urged the Supreme Court yesterday to overturn lower-court rulings that would allow a suit against them and other federal officials to be heard in U.S. District Court, Providence.

In an oral presentation, lawyers for the former CIA officials argued that allowing the suit to go forward in Rhode Island violated the intent of Congress and paved the way for the officials to be sued in federal courts all over the country.

Colby and Walters were among 25 former and present federal officials named in a class-action suit filed in 1975. The suit charged that the constitutional rights of thousands of Americans were violated when the CIA, over a 20-year period, opened letters addressed to them from the Soviet Union and other places.

The original suit, which called for more than $1 billion in damages on behalf of all of the alleged victims of the mail-intercept program, raised a number of complex jurisdictional questions because many of the officials named were no longer in office when the suit was filed — and almost all of them lived outside Rhode Island.

The suit was brought in Rhode Island because one of the alleged victims, Rodney Driver, lives in the state. He is a professor of mathematics at the University of Rhode Island.

The U.S. Circuit Court of Appeals in Boston, which initially got the case on appeal, ruled that federal law allowed the suit to be brought in Rhode Island only against federal officials who were in office when the action was filed in 1975. Those who had left government service by then, or had switched jobs, would have to be sued in federal courts near where they live, the appeals court said.

Since Colby and Walters were still with the CIA when the suit was filed, they were still vulnerable in Rhode Island, as were eight other officials. In appealing to the Supreme Court, Colby and Walters argued that when Congress dealt with this question in 1962, the intent was to make it easier for citizens to file suits against government officials engaged in allegedly illegal acts. That is, Congress wanted to spare a citizen from having to travel great distances to an appropriate federal jurisdiction when the goal was to enjoin a federal official from doing something — or to make him do something he refused to do.

Damage suits, their lawyers argued, are another story. Congress intended that these be filed only where where the official lived — or where the alleged violation of law occurred. Neither lives in Rhode Island, and the mail-intercept program allegedly took place in New York.

Melvin Wulf, the New York lawyer who is representing the other side, rejected all of this.

"These defendants are not your run-of-the-mill (defendants)," he said. And the burden, he insisted is not that great, with the federal government picking up the officials' attorneys' fees.

He said the suit rose out of a "massive 20-year counterintelligence operation" that involved the opening of more than 200,000 letters addressed to American citizens.

The question, he insisted, is whether the victims can seek vindication "conveniently" or whether they must "chase the defendants around the country."

He argued that the 1962 act of Congress did indeed intend to be generous with citizens filing damage suits against federal officials. And more than once he reminded the justices that this was a "big case."

This brought one of the few humorous exchanges of the day, as Justice Thurgood Marshall brought Wulf up short and quipped: "You keep saying this is a 'big' case. Then why did you file it in such a small state?"

Wulf explained that Driver, the Rhode Islander, was the first one "on" the suit and so Rhode Island was the most convenient spot.

The court, which now must wade through the fuzzy congressional law and its legislative history, is expected to rule on the question before it recesses in about two months.